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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/710,690	11/10/2000	Chris Carmichael	IAG-BTB	5681
74162	7590	12/28/2009	EXAMINER	
Law Office of Scott C Harris Inc PO Box 1389 Rancho Santa Fe, CA 92067			GLASS, RUSSELL S	
			ART UNIT	PAPER NUMBER
			3687	
			NOTIFICATION DATE	DELIVERY MODE
			12/28/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 09/710,690	<b>Applicant(s)</b> CARMICHAEL ET AL.	
	<b>Examiner</b> R. SHAY GLASS	<b>Art Unit</b> 3687	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The previous rejections are withdrawn based upon Applicant's recent amendment.

***Claim Rejections - 35 USC § 102***

1. **Claims 21-23 and 25-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Rothman et al. (2002/0072984).**

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. As per claims 21 and 34, Rothman et al. teaches a method, comprising:

receiving an order over the Internet at a server, via a web- based interface, said order received from a consumer, said order specifying at least one product to be purchased (see Rothman, abstract)(disclosing purchasing products over the Internet);

receiving payment information from said consumer over the Internet (see Rothman, ¶ 39)(disclosing a third party payment server);

based on said receiving said order and said payment, determining one of a plurality of different order fulfillment locations to send said at least one product to said consumer, (see Rothman, abstract)(disclosing that based on information supplied by the buyer a local retailer is selected to ship the purchased product);

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sending contents from said order, from said one of said order fulfillment locations based on said determining, to the consumer, using a shipping method (see Rothman, abstract)(disclosing that based on information supplied by the buyer, selecting a local retailer to ship the purchased product);

subsequent to said sending, receiving information indicative of the consumer having returned to return the contents from said order to a local retailer, where said local retailer is different than said server and different from said one of said order fulfillment locations, (see Rothman, ¶ 47), and

responsive to said consumer returning said contents, refunding the payment received as part of said payment information, (see Rothman, ¶ 47)(disclosing returning a product ordered online to a local retailer and receiving a refund for the return);

maintaining an inventory management system that determines for said plurality of fulfillment locations, amounts of inventory maintained at least at a plurality of said fulfillment locations, (see Rothman, ¶ 46); and

storing, in said inventory management system, information indicative of inventory at local retailers, and also storing information indicative of other local retailers, and using said information to select one of said retailers to send said products, and using said refund of said item to increase an indication of a number of items stored at said retailer in said inventory management system, (see Rothman, ¶ 47)(disclosing that a local distributor may retain a refunded product for resale, i.e., add it to the inventory on hand; or that the local distributor can return the refunded product to the seller and be compensated by seller for the refund provided to the customer).

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3. As per claim 23, Rothman et al. teaches wherein said determining comprises determining an order fulfillment location to send said product which is physically closest to said consumer, (see Rothman, ¶ 75)(disclosing order fulfillment by a local retailer based on address information).

4. As per claims 26 and 35, Rothman et al. teaches receiving an order over the Internet at a server, via a web- based interface, said order received from a consumer, said order specifying at least one product to be purchased (see Rothman, abstract)(disclosing purchasing products over the Internet);

receiving payment information from said consumer over the Internet (see Rothman, ¶ 39)(disclosing a third party payment server);

based on said receiving said order and said payment, determining one of a plurality of different order fulfillment locations to send said at least one product to said consumer, (see Rothman, abstract)(disclosing that based on information supplied by the buyer a local retailer is selected to ship the purchased product);

sending contents from said order, from said one of said order fulfillment locations based on said determining, to the consumer, using a shipping method (see Rothman, abstract)(disclosing that based on information supplied by the buyer, selecting a local retailer to ship the purchased product);

subsequent to said sending, receiving information indicative of the consumer having returned to return the contents from said order to a local retailer, where said local retailer is different than said server and different from said one of said order fulfillment locations, (see Rothman, ¶ 47), and

responsive to said consumer returning said contents, refunding the payment received as part of said payment information, (see Rothman, ¶ 47)(disclosing returning a product ordered online to a local retailer and receiving a refund for the return);

wherein said order fulfillment locations have different brands than a brand associated with said server which receives said order, and wherein said order fulfillment location receives said brand associated with said server, (see Rothman, abstract)(disclosing a branded product “hearts on fire Diamond” sold through a local retailer having a branded name associated the online store/online product).

5. As per claims 27 and 36, Rothman et al. teaches sending information from said server which defines packaging the order in branded packaging at the order fulfillment location using said brand associated with said server, (see Rothman, fig. 13)(disclosing a "hearts on fire diamond" sold online and shipped from a local retailer).

6. As per claim 28, Rothman et al. teaches informing the order fulfillment location when the consumer returns a product, (see Rothman, ¶ 47)(The customer informs the fulfillment location of a return by presenting the return to the fulfillment location).

7. As per claim 29, Rothman et al. teaches analyzing information indicative of orders to determine product trends based on geographic territory, (see Rothman, ¶ 45)(disclosing that sales are tracked for commission and compensation purposes for each distributor or employee of a distributor).

8. As per claim 30, Rothman et al. teaches analyzing information indicative of orders to determine product trends based on demographics (see Rothman, ¶ 45)(disclosing that sales are tracked for commission and compensation purposes for each distributor or employee of a

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distributor).

9. As per claim 31, Rothman et al. teaches a method, comprising:

receiving an order over the Internet at a server, via a web- based interface, said order received from a consumer, said order specifying at least one product to be purchased (see Rothman, Abstract)(disclosing purchasing products over the Internet);

receiving payment information from said consumer over the Internet (see Rothman, ¶ 39)(disclosing a third party payment server);

based on said receiving said order and said payment, determining one of a plurality of different order fulfillment locations to send said at least one product to said consumer, wherein said order fulfillment locations have different names than a name associated with said server which receives said order, and wherein said order fulfillment location receives said name associated with said server (see Rothman, abstract)(disclosing that based on information supplied by the buyer a local retailer is selected to ship the purchased product);

sending, from the server, information indicative of packaging the order at the order fulfillment location in branded packaging, said branded packaging using said name associated with said server (see Rothman, fig. 13)(disclosing a "hearts on fire diamond" sold online and shipped from a local retailer); and

sending contents from said order to the consumer, from said one of said order fulfillment locations based on said determining, and including said rebranding, using a shipping method, said sending being to said consumer (see Rothman, abstract)(disclosing information supplied by the buyer wherefrom a local retailer is selected to ship the purchased product).

10. As per claim 32, Rothman et al. teaches subsequent to said sending, allowing the

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consumer to return the contents from said order to a local retailer different than said server and different from said one of said order fulfillment locations, and responsive to said consumer returning said contents, refunding the payment received as part of said payment information (see Rothman, ¶ 47)(disclosing returning a product ordered online to a local retailer and receiving a refund for the return).

11. As per claim 33, Rothman et al. teaches maintaining an inventory management system that determines for said plurality of fulfillment locations, amounts of inventory maintained at least at a plurality of said fulfillment locations (see Rothman, Abstract)(disclosing local retailers providing inventory information to the online commerce store), and using said refund of said item to increase an indication of a number of items stored at said retailer in said inventory management system, (see Rothman, ¶ 47)(disclosing that a local distributor may retain a refunded product for resale, i.e., add it to the inventory on hand; or that the local distributor can return the refunded product to the seller and be compensated by seller for the refund provided to the customer).

12. As per claim 37, Rothman discloses a system wherein said internet server analyzes information indicative of orders to determine product trends based on geographic territory, (see Rothman, ¶¶ 58, 59)(disclosing analysis of local distributor data).

13. As per claim 38, Rothman discloses a system wherein said internet server analyzes information indicative of orders to determine product trends based on demographics, (see Rothman, ¶ 60)(detailing the types of user identification data to be stored for analysis).

### **Claim Rejections - 35 USC § 103**



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14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. **Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rothman et al. (2002/0072984) in view of Borders et al. (2007/0174144).**

16. As per claim 24, Rothman et al. discloses all elements of the claimed invention, but fails to explicitly disclose wherein said determining comprises determining an order fulfillment location to send said product which is within a specified mailing time to said consumer.

Borders et al. discloses online store product availability including: wherein said determining comprises determining an order fulfillment location, (see Rothman, ¶ 75)(disclosing order fulfillment by a local retailer based on address information), to send said product which is within a specified mailing time to said consumer (see Borders, ¶ 41)(disclosing customers scheduling a specific date and time for delivery of a product through the online store).

From this disclosure of Borders et al. it would have been obvious to one having ordinary skill in the art at the time that the invention was made to modify the online store system of Rothman et al. to include allowing the customer to schedule an delivery date and time in order to facilitate delivery of customer orders when a customer is home (see Borders, ¶ 41).

***Response to Arguments***

Applicant's arguments filed 8/3/2009 have been fully considered but they are not persuasive for the following reasons.

1. In response to Applicant's argument that the Rothman reference fails to disclose updating the inventory when a product is returned to a retailer, such that the product could be found outside of contact with the retailer it was returned to, it is submitted that Rothman, ¶ 46 discloses that inventory information from local distributors stored on a central server.
2. In response to Applicant's argument that the Rothman reference fails to disclose a retailer selling a brand associated with a server, it is submitted that Rothman discloses sale of an online "hearts on fire diamond" product via local retailers, (see Rothman, fig. 13)
3. In response to Applicant's argument that the Rothman reference fails to disclose sending from an order fulfillment location that is physically closest to the customer, it is submitted that in addition to the references already provided, that the Rothman reference further discloses that orders may be sent from a distributor within the geographic region of the customer, (see Rothman, ¶43).
4. In response to applicants argument that Rothman fails to disclose branded packaging, it is submitted that Rothman discloses both a receipt indication the purchase of a HOF "hearts on fire" diamond ring, and also an insurance form indicating specific available insurance "Gemshield" for the "hearts on fire" diamond ring both of which would be provided to the purchaser, (see Rothman, figs. 17 and 18).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. SHAY GLASS whose telephone number is (571)272-7285.

The examiner can normally be reached on weekdays between 9 AM and 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MATTHEW GART can be reached on 571-272-3955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. SHAY GLASS/  
Examiner, Art Unit 3687

/Vanel Frenel/  
Primary Examiner, Art Unit 3687  
December 19, 2009